

**MINUTES**

**MONTANA SENATE  
59th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY**

**Call to Order:** By **CHAIRMAN BRENT R. CROMLEY**, on March 18, 2005  
at 3:20 P.M., in Room 335 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Brent R. Cromley, Chairman (D)  
Sen. John Esp (R)  
Sen. Duane Grimes (R)  
Sen. Lynda Moss (D)  
Sen. Jerry O'Neil (R)  
Sen. Trudi Schmidt (D)  
Sen. Dan Weinberg (D)  
Sen. Carol Williams (D)

**Members Excused:** Sen. John Cobb (R)

**Members Absent:** None.

**Staff Present:** David Niss, Legislative Branch  
Rita Tenneson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SJ 30, 3/15/2005  
Executive Action: SB 581; HB 555; SJ 30  
Discussion: HB 68

**HEARING ON SJ 30****Opening Statement by Sponsor:**

**SEN. DAN WEINBERG (D), SD 2**, opened the hearing on **SJ 30**, Urge maintaining integrity of Medicaid program.

**SEN. WEINBERG** told the Committee this is a simple matter. Montana is a welfare state. We send less money to Washington then we get back, becoming somewhat dependent upon the money from Washington. The Resolution asks the U.S. Congress not to cut our Medicaid program. Cuts would be disastrous to those depending on Medicaid and it would be disastrous to our economy. A \$1 million cut in federal medicaid funding would result in the loss of 64 Montana jobs and the loss of \$4.9 million.

**Proponents' Testimony:**

**Hank Hudson, Department of Public Health and Human Services, (DPHHS)**, thanked **SEN. WEINBERG** for bringing the Resolution before the Committee. He said Montana prides itself in running an efficient and frugal Medicaid program and follows Medicaid rules. The President's budget cuts say they want to find states that have not followed the rules and reduce their funding. Medicaid is a major part of the State's commitment to the poor and less fortunate within the State. It is the opportunity to make sure a newborn child, in a poor family, gets the same start and attention at birth, and before birth, as children of the more fortunate. Medicaid assists those with physical disabilities and older low-income people in the State who have community based services. He hoped the people in Washington, D.C. will think equally about the human beings involved and not just about budget cuts.

**Steve Yeakel, Montana Council for Maternal and Child Health**, said this is a significant proposal and the Council asked him to emphasize the importance of the Medicaid program. Medicaid provides for building a strong CHIP program, as well as many other programs for children. The number of births in the State of Montana covered by Medicaid is around 54%. The level in which Congress proposes to cut the Medicaid program would cause significant difficulties for families and children.

**John Flink, Montana Hospital Association**, said, as providers, they are paid to treat medicaid beneficiaries who come to their facilities for treatment. Nursing homes have a large number of their population whose care is paid by medicaid. He echoed the statements by **SEN. WEINBERG** and **Mr. Yeakel** regarding the importance of making a strong statement to the Montana

congressional delegation. If medicaid doesn't pay providers adequately, they will have to raise charges to privately insured Montanans. This means higher insurance costs.

**Jani McCall, Deaconess Billings Clinic, Montana Children's Initiative Providers Association**, reminded the Committee that, in terms of children's services for kids with behavioral and serious mental health issues, there are around 9,000 kids in Montana currently receiving some form of medicaid services, as well as the families. She added that this is an important message to send to Congress and the administration.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. CROMLEY** asked **Mr. Hudson**, regarding the 5 to 1 ratio, if he could give a statistic for a recent year in terms of the amount of dollars that has come into Montana. **Mr. Hudson** thought the annual medicaid budget was around six hundred million dollars. Seventy percent of that would be federal funds.

**SEN. GRIMES** asked **Mr. Hudson** about line 17 and the number of jobs medicaid health care spending supports. He wanted to know whether they were direct care workers. **Mr. Hudson** told him he believed this came from a study done at the university system. The study includes not only people who provide services directly to medicaid clients, but people who work in nursing homes, group homes, doctors' offices, and people who supply materials to medicaid providers. It is a broad definition.

**SEN. GRIMES** thought the 9000 jobs Medicaid supported should be included and defined in the Resolution. This would relate the human element **Mr. Hudson** referred to.

**SEN. WILLIAMS** agreed with **SEN. GRIMES** and thought the department could get statistics regarding how many families, disabled people, and children were affected and put that in the Resolution, making it more powerful.

**SEN. WEINBERG** said he was going to refer to the statement **SEN. WILLIAMS** made on the Senate floor regarding Congress actually reading the resolutions. He said **SEN. WILLIAMS** made a very convincing statement that, when she and her husband were in Washington, they paid close attention to resolutions and they made a powerful statement. This gave him enormous encouragement.

There are powerful statements on lines 27 through 30. If they should be moved closer to the top, and if the Committee wanted to backup the statement with more statistics, that was fine with him.

**SEN. O'NEIL** asked if **SEN. WEINBERG** would explain the Whereas pertaining to every \$1 million cut in Medicaid, Montana loses \$4.9 million. **SEN. WEINBERG** referred the question to **Mr. Hudson** who told the Committee, the match is headed toward 70/30 because of the improving economy in Montana. It includes some of the multiplier effect. If looking at the loss of federal funds, for every \$30 of State money that is cut, we lose \$70 of federal money. **SEN. O'NEIL** asked why it isn't for every dollar of federal money they cut, we lose a dollar. **Mr. Hudson** assumed it referred to the multiplier effect on jobs lost and how it ripples through the health care economy.

**SEN. CROMLEY** wondered if this was a misprint. **Mr. Hudson** will look into the figures and report back.

**Closing by Sponsor:**

**SEN. WEINBERG** said DPHHS applies for waivers and applies for matching money from the federal government. When the federal government agrees to that, the State comes through with their share of the match. He said that is what is happening on line 19 of the Resolution. They are keeping tabs on the cuts going on in Washington regarding medicaid cuts. There is growing support on both sides of the isle to not cut funding. It is important for states to get behind this and make themselves heard.

**DISCUSSION ON HB 68**

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 28.1}***

**SEN. ESP** asked if the amendments proposed by **SEN. GRIMES** were on the bill. **SEN. GRIMES** said they were off. The bill is back to its original House form.

**Motion:** **SEN. WEINBERG** moved that **AMENDMENT HB006803.adn** BE **ADOPTED.**

**EXHIBIT** (phs60a01)

***{Tape: 1; Side: A; Approx. Time Counter: 28.1 - 30.3}***

**Discussion:**

**SEN. WEINBERG** said there is a legal process that takes place, regarding the penalty. He thought some of the discretion should be left up to the judge. The appropriateness or inappropriateness could fall within the discretion of the judge. The penalty of ten years is lower and the amounts are also open to the judge's discretion. He said it was impossible to write into the bill every possible type of occurrence that could take place, so it is left fairly general.

**SEN. GRIMES** questioned if it says now they cannot purposely or knowingly administer any prescription drugs or any medicine. The word inappropriately isn't put any place in the bill except in new paragraph 3. He asked if it would apply in all cases. **Mr. Niss** said it is an additional requirement that would apply whenever a medicine or prescription drug is administered. For example, if the care-giver received the authorization for administration of the drug, because it was an emergency medical condition notwithstanding, that authorization still could not be administered inappropriately. **SEN. CROMLEY** asked if there was a problem, assuming you do not have written authorization. **Mr. Niss** told the Committee, under the terms of the bill as it came to Committee, the only two ways medicine or prescription drugs can be administered are under 1) written authorization or 2) if the requirements of emergency administration are fulfilled. Neither of those apply if there isn't the written authorization. If there isn't emergency authorization, falling within sub section 2, the drug couldn't be administered.

**SEN. WEINBERG** said that earlier we were talking about intentionality, which is in the eyes of the person taking action. He did not think that was the way to go, because every time they would say their intentions were good. He said they had also considered using medication to alter behavior. Sneezing is a behavior, so he didn't think they should concentrate on behavior. Appropriateness, he thought, was better because it leaves the force in the hands of the judge who is in a much better position to decide on what is inappropriate and what is appropriate.

**Mr. Niss** said it is the same penalty for purposely, knowingly, or inappropriately.

**SEN. GRIMES** was concerned that people would inadvertently fall into a criminal category with no ill intent on their part. He didn't see where purposely or knowingly defines or excludes them from being caught up in the penalty when they didn't intend to harm the child. The proponents of the bill were trying to go after these people who maliciously doped their child.

**SEN. MOSS** talked to Pam Bucey in the Attorney General's Office. They were familiar with this case because they had tried it. She felt what is being identified as the fine and years of prison was minor in that particular case.

**Roy Kemp, Licensing Bureau Chief**, said the case hadn't come to trial yet. Plea bargaining fell apart and the trial has been set for May or June. They will have to subpoena one of his employees to testify, so there is no case yet. The crime the daycare is charged with, is they inappropriately administered dephrahydramine to a number of children. It was a mitigated homicide, manslaughter. He said we are talking about children in care, six or under, so even a simple thing such as administering an aspirin to a child is very dangerous. The label on an aspirin bottle says you may not administer, without a doctor's approval, to any children under twelve because of certain syndromes that may result. Administrative rules already prohibit many of these activities. This person did this, regardless of the requirements of administrative rule, and this is one reason this bill was brought forth.

**SEN. GRIMES** wondered if the amendment would be better if we took out the words, pursuant to subsection 1 or 2. Then you would be creating a third category where medicine may be administered. It could even be inappropriate administration in accord with the rules of the department. **Mr. Niss** thought that was a good suggestion.

**SEN. CROMLEY** said the amendment, paragraph 2, sub paragraph three would be the medicine or prescription drug administered to the child may not be inappropriately administered.

*{Tape: 1; Side: B; Approx. Time Counter: 0 - 30}*

**SEN. SCHMIDT** asked **Mr. Kemp** what the rules currently say about giving medication at day care. **Mr. Kemp** told her rules prohibit the unauthorized administration of medications. The parent has to be involved. They have to say their child will receive a certain medicine at a certain time and with a certain dosage. That would constitute parental approval. Non parental approval would be, in the case of a bee sting, the child automatically being given a medication. The department did offer an amendment, if section 2 was not struck. That amendment discusses administration under emergency conditions, such as charcoal for poison control.

**SEN. ESP** suggested appointing a subcommittee to try to sort the bill out.

**SEN. CROMLEY** appointed **SEN. WEINBERG**, **SEN. SCHMIDT**, **SEN. O'NEIL**, **SEN. MOSS**, **David Niss** and **Roy Kemp** as a committee to work on the bill and come up with a solution.

**SEN. WEINBERG** withdrew his motion.

**EXECUTIVE ACTION ON HB 581**

*{Tape: 2; Side: A; Approx. Time Counter: 0 - 26.7}*

**Motion:** **SEN. ESP** moved that HB 581 BE CONCURRED IN.

**Discussion:** **SEN. ESP** handed out amendment **HB058101.adn** which speaks to the rules for extending the limitation.

**EXHIBIT** (phs60a02)

**SEN. MOSS** asked **Mr. Vidrine** to comment on the amendment. **Mr. Vidrine** didn't know if the term "good cause" had a legal definition. He asked **Mr. Niss's** opinion. **Mr. Niss** said he doubted it would in this situation. **Mr. Vidrine** told her, right now, the bill's language is open, without trying to characterize what the Board might do.

**SEN. WILLIAMS** was concerned with "good cause" was who would make that decision. She suggested "may" would be better. She thought anyone could come and say good cause and that seemed to weaken it to her.

**SEN. ESP** said they will have to have a basis why they can and can't extend this. They will have to develop rules to do that, and the rules will be whether it may or may not be done. He was trying to give some legislative direction so, if they have an extension, the rules will have some good reason.

**SEN. SCHMIDT** asked **Ann Hedges** to comment. **Ms. Hedges** opposed the amendment. She thought it was unnecessary as the Board wouldn't do anything without just cause. This will set up an unnecessary debate in the Board meeting. What they are asking, with the extension, is a very rare thing. It may happen only one or two times a year.

**SEN. O'NEIL** asked **Ms. Hedges** if she was saying the 15-day extension was because the public requested it. **Ms. Hedges** told him it could be the public or the company. The company may need a little more time to get their response to the agency. She added that another 15 days really didn't matter that much. **SEN.**

**O'NEIL** asked if it would be acceptable to her if the amendment said, provides another 15 days requested by the agency or public. **Ms. Hedges** didn't think that was necessary. She thought that may be what part of the rule is. She would resist any amendment to the bill.

**SEN. ESP** understands they will have to decide a basis on which they can or cannot extend the days. He is attempting to determine what would be the cause to allow them to extend it.

**Motion/Vote:** **SEN. ESP** moved that **AMENDMENT HB058101.adn** BE **ADOPTED**. Motion passed 5-4 by roll call vote with **SEN. CROMLEY**, **SEN. MOSS**, **SEN. SCHMIDT**, and **SEN. WILLIAMS** voting no. **SEN. COBB** voted aye by proxy.

**Motion:** **SEN. ESP** moved that **HB 581** BE **AMENDED ON PAGE 7 LINE 11 TO CHANGE SUBSECTION 13 TO SUBSECTION 14**.

**Discussion:** **SEN. ESP** referred to the technical note in the fiscal note.

**SEN. MOSS** said the sponsor did identify that this can be fixed at the discretion of the process.

**SEN. ESP** said that he had asked three people and they said it should be fixed.

**Vote:** Motion carried unanimously by voice vote.

**Motion/Vote:** **SEN. ESP** moved that **HB 581** BE **CONCURRED IN AS AMENDED**. Motion carried unanimously by voice vote. **SEN. COBB** voted aye by proxy.

**SEN. MOSS** will carry the bill on the Senate floor.

**SEN. CROMLEY** held **HB 581**, at the request of **SEN. WEINBERG**, for further discussion during the next Committee meeting on March 21.

#### **EXECUTIVE ACTION ON HB 555**

*{Tape: 2; Side: B; Approx. Time Counter: 0 - 15.5}*

**Motion/Vote:** **SEN. WILLIAMS** moved that **HB 555** BE **CONCURRED IN**. Motion carried 7-2 by roll call vote with **SEN. ESP** and **SEN. O'NEIL** voting no. **SEN. COBB** voted aye by proxy.

**SEN. COBB** will carry the bill on the Senate floor.

**EXECUTIVE ACTION ON SJ 30**

***{Tape: 2; Side: B; Approx. Time Counter: 15.5 - 20.6}***

**Motion:** SEN. CROMLEY moved that SJ 30 DO PASS.

**Discussion:** SEN. CROMLEY questioned the million dollars. He said for every \$1 million cut in federal medicaid funding, we are losing \$4.9 million. It didn't make sense. SEN. WEINBERG said he could clean that up.

SEN. CROMLEY said Jani McCall had mentioned 9,000 children in the State of Montana are receiving Medicaid. This was pretty significant.

SEN. O'NEIL didn't believe you had a multiplier effect on jobs created by tax dollars of 4.921. If that is so, then all we need to do is tax the jobs created by 25%, and we will be the richest State in the world.

SEN. GRIMES said the irony of this is, we have created an entitlement oriented system where "we are all feeding at the trough" of the Medicaid/Medicare assistance. In the middle of the last century we decided this was constitutional and it has gotten us into quite a predicament. As the world becomes more globally competitive, we are going to have less resources to fund the things we want to do in this country. But, on the other hand, he said we cannot afford not to. We have to support our poor because that's a system we have created.

***{Tape: 2; Side: B; Approx. Time Counter: 20.6 - 30.7}***

SEN. WILLIAMS appreciated what SEN. GRIMES said, but added that we spent ourselves into debt, with tax cuts and military endeavors, without really considering what happens to people at home in our communities. These are issues we are going to start addressing again in our country. She recalled the bill, earlier, for the medical school in Billings. She thought the only place they would get a medical school would be in Bagdad. The Legislature has to make these kinds of decisions as a nation and the Legislature has a role in this. She was delighted SEN. WEINBERG had brought the Resolution over.

SEN. WEINBERG resented the statement, "feeding at the trough." He said these are real needs. There are children who need medical care, women who are pregnant who need prenatal care, as well as many other needs down the line. These people are constituents, people who sent us here to take care of business.

To call it feeding at the trough is a terrible injustice. There are people who need help and we are here to do it. Whether it is a million, or a billion, it's peanuts compared to what is being wasted. He said we are fighting over scraps so the people in Washington can bankrupt our treasury. The needs are greater here than what they are thinking up for overseas.

**SEN. GRIMES** said that, by feeding at the trough, he meant we have a higher percentage of federal dollars coming into the State than other states have. He thought, at some point in time, this country will have to think a little less globally and a little more nationalistically regarding our finances. He agreed with **SEN. WEINBERG** that we send so much money to these other countries.

**SEN. CROMLEY** withdrew his motion to pass **SJ 30**. The reason for his withdrawal was the upcoming amendments, as well as more information and statistics regarding the Resolution.

**ADJOURNMENT**

Adjournment: 5:10 P.M.

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SEN. BRENT R. CROMLEY, Chairman

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RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

**EXHIBIT ([phs60aad0.PDF](#))**